



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

June 9, 2015
1506-VU-06
Exhibit 1

Petition Numbers: 1506-VU-06

Subject Site Location: 14939 Ditch Road

Petitioner: Jeff Kelich

Requests: The petitioner is requesting approval of a Variance of Use to allow a commercial lawn and landscaping business in the Single-Family Low Density District (SF2) District (Chapter 13: Use Table).

Current Zoning: Single-Family 2

Current Land Use: Concrete business

Approximate Acreage: 4.0 acres +/-

Exhibits:

1. Staff Report
2. Location Map
3. Email correspondence re: Centennial HOA communication
4. Existing Variance Approval (79-V-12)
5. Application
6. Concept Plan
7. Existing Conditions

Staff Reviewer: Kevin M. Todd, AICP

PETITION HISTORY & PUBLIC NOTICE

This petition is scheduled to receive a public hearing at the June 9, 2015, Board of Zoning Appeals meeting, however, Public Notice has not been properly served for this project.

The Westfield-Washington Township Board of Zoning Appeals Rules and Procedures (the "Rules") require three (3) forms of public notice: 1) newspaper legal notice publication (this is required by Indiana Code 36-7-4-920 and by local BZA Rules of Procedure, Article X); 2) certified mail (this is required by local BZA Rules of Procedure, Article X); and 3) posting on the property (this is also required by local BZA Rules of Procedure, Article X). Each form of public notice is required to be served at least ten (10) calendar days prior to the hearing date. In order to comply with this requirement for the June 9, 2015 BZA meeting, notice was required to be served on or before May 30, 2015. Below is a summary of when the various forms of notice were served:



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1. Newspaper Publication – published in the Indianapolis Star and Noblesville Times on May 29, 2015 (11 days before the hearing) – COMPLIANT.
2. Certified Mail – postmarked on June 3, 2015 (6 days before the hearing) – **NOT COMPLIANT.**
3. Posting on the Property – posted on June 3, 2015 (6 days before the hearing) – **NOT COMPLIANT.**

Because the two forms of public notice that did not meet the required deadline (Certified Mail and Posting on the Property) are local rules only and not statutory requirements, they are eligible to be suspended by a unanimous vote of the members present at the meeting (BZA Rules of Procedure, Article XIII, 3), if so requested by the petitioner. The petitioner has requested that the public notice rules be suspended for these two forms of public notice, and allow a 6-day notice period instead of a 10-day notice period.

The Board should be aware that the petitioner was required to send certified mailings to nearly 60 nearby property owners. These mailings were postmarked on Wednesday, June 3, 2015. The absolute soonest a letter could be received would be Thursday, June 4, 2015 (5 days before the hearing date). Unlike first-class mail, certified letters are required to be picked-up by the recipient at the Post Office. It is very likely that letters would not be obtained by many recipients until Friday (4 days prior to the hearing), Saturday (3 days prior to the hearing), or Monday (1 day prior to the hearing). It is worth noting, however, that because a petitioner cannot control when (or if) a mail recipient actually receives a letter (whether postmarked at least 10-days prior to the hearing or not), there is no rule stating when a certified mail public notice has to be received by the recipient.

The Board should also be aware that the Department Staff advised the petitioner to meet directly with the neighbors regarding his plans for the subject property. As of the publishing of this report (June 4, 2015), Staff is not aware of any attempts by the petitioner to meet with neighbors. The Board may want to request an update from the petitioner regarding the status of neighbor discussions. The petitioner has provided an email correspondence which reports a conversation with (and case materials being sent to) the Centennial HOA President regarding this project (see Exhibit 3). It should be noted that neighbor discussions and HOA member discussions do not replace formal public notice rules and requirements, however, the Board may want to take into consideration any additional public outreach that may have occurred (and the timing of such outreach) when making its decision about the public notice rule suspension request.

BOARD ACTION REQUIRED – Prior to hearing the variance case, the Board will need to determine if a 6-day public notice period is sufficient for the certified mail and property posting rules. According to the BZA Rules of Procedure, the Board may suspend a rule by unanimous vote of the members present at the meeting (BZA Rules of Procedure, Article XIII, 3). A successful suspension of the rules vote would



result in the case being heard and a public hearing held on June 9, 2015, as scheduled. A failed suspension of the rules vote would result in the case being continued to the July 14, 2015 hearing and not being heard at the June 9, 2015 BZA meeting.

PROPERTY HISTORY

On June 18, 1979, the Board of Zoning Appeals approved a variance request to allow the operation of a concrete business and the construction of a storage building on the subject property (see [Exhibit 4](#)). There were no conditions of approval associated with this variance. Since the variance approval in 1979, a concrete business has operated on the subject property.

ANALYSIS

Location: The subject property is approximately 4 acres +/- in size and is located at 14939 Ditch Road (the "Property"). The Property is zoned Single Family-2 (SF-2). All adjacent property is single-family residential in use. Adjacent property to the north and east is the Centennial Subdivision and is zoned SF-3 (Cluster). Adjacent property to the south is the Centennial South Subdivision and is zoned Centennial South PUD District. Adjacent property to the west is the Harmony Subdivision and is zoned Harmony PUD District.

Variance Requests: The request is to allow a new commercial lawn and landscaping business on the Property. If approved, the proposed use would replace the existing use of the Property as a concrete business location.

Project Description: The proposed use would include outdoor storage of landscaping materials, plant materials, and equipment, as depicted in the proposed concept plan (see [Exhibit 6](#)). As proposed, the existing buildings would be used. The proposed concept plan depicts new landscaping around the perimeter of the Property. The Board may want to consider requiring similar landscaping be installed, if the variance request is approved. If the use is approved through this variance request, then any new structures, parking areas, or any improvement requiring an Improvement Location Permit would require Development Plan review and approval by the Advisory Plan Commission.

Existing Screening and Buffering: It appears that existing screening and buffering along the perimeter of the site occurs on the Centennial/Centennial South side of the property line. The north property line has a wood privacy fence with trees. The east property line has a mature tree line. The west property line has an undulating mound, trees, and a privacy fence (see [Exhibit 7](#)). The petitioner is proposing the addition of landscaping around the perimeter of the property (see [Exhibit 6](#)).

Land Use: Landscaping business in Westfield-Washington Township are not typically surrounded by suburban residential development. This would be a unique circumstance, if approved. Most of the landscaping businesses found in Westfield-Washington Township are either in rural or



commercial/industrial areas of the community and either pre-date zoning or are allowed by variance. The UDO groups “landscaping contractors” under the land use term “Construction Trade Office”, which is allowed by-right in the Enclosed Industrial and Open Industrial Districts and is allowed by Special Exception in the General Business District. The Property is currently being used as a concrete business with outdoor activity, and changing the use of the SF-2 property to a landscaping business with outdoor activity could arguably be considered a lateral change in terms of overall land use intensity and impact on the surrounding area.

Staff has advised the petitioner the importance of neighbor support in applying for this variance request. However, as of the publishing of this report (June 4, 2015), there has been no attempt by the petitioner to meet with the neighbors of the Property to discuss the proposal. Neighbor support regarding the proposed change in use should be considered by the Board. The Board may want to request an update from the petitioner regarding the status of neighbor discussions and support levels.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the “Comprehensive Plan”) identifies this Property within the “Suburban Residential”¹ land use classification. The Comprehensive Plan does not contemplate a landscaping business within the Suburban Residential area. Residential, institutional, and recreational uses are listed as appropriate land-use types within the Suburban Residential classification.

PROCEDURAL

Public Notice: The Board of Zoning Appeals (the “BZA”) is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the June 9, 2015, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law, but it was not properly served in accordance with the Board of Zoning Appeals Rules of Procedure. See “**Petition History & Public Notice**” discussion above.

Conditions: The UDO² and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Development Plan Approval: If the Board of Zoning Appeals approves the requested Variance of Use and Variance of Development Standard, then certain future site improvements would be required to obtain Development Plan approval by the Advisory Plan Commission.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO³ requires that the approval of the variance shall be memorialized in an acknowledgement of variance

¹ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

² Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

³ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved under Ind. Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance of use arises from some condition particular to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought; and,
5. The approval does not interfere substantially with the comprehensive plan.

FINDINGS OF FACT

- A. If the Board is inclined to **APPROVE** the variance of use request, then the Department recommends the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that allowing a landscaping business on the Property would be injurious to the public health, safety, morals, and general welfare of the community. A concrete company has operated on the Property for 36 years, and a landscaping operation would have a similar impact on the site and the surrounding area.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The proposed use would enhance the property at the property lines by installing proper buffering, thus improving the value of the property. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.



3. *The need for the variance of use arises from some condition particular to the property involved:*

Finding: The subject property has been used as a concrete business with outdoor activity for 36 years and has been enveloped by residential development over that timeframe. Given the size of the property and its lack of connections to adjacent residential development, redeveloping this Property for residential development would be difficult.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:*

Finding: Strictly applying the zoning ordinance would not permit the requested use. Per the UDO, landscaping businesses are only allowed by-right in industrial districts and the GB District by Special Exception. This use is typically found in either agricultural or industrial areas of the Westfield community. However, the previous (and current) use of this property as a concrete business with outdoor activity, coupled with the fact that this property has been surrounded by residential development and not provided any connection points, lends itself to re-purposing the site for a landscaping operation with minimal site improvements.

5. *The approval does not interfere substantially with the comprehensive plan:*

Finding: The proposed land use is not contemplated in the Suburban Residential area of the Comprehensive Plan. However, the proposed use is not very dissimilar from the existing concrete business use, in terms of land-use intensity, and could be considered a similar continuation of the existing land use type.

B. If the Board is inclined to **DENY** the variance of use request, then the Department recommends the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that allowing a landscaping business on the Property would be injurious to the public health, safety, morals, and general welfare of the community. A concrete company has operated on the Property for 36 years, and a landscaping operation would have a similar impact on the site and the surrounding area.



2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: It is possible that the use and value of adjacent property will be affected in a substantially adverse manner. While similar because there are outdoor activities involved in both, concrete operations and landscaping operations are not the same thing. Landscaping operations could have more intense and frequent outdoor activity than a concrete company would have. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. The need for the variance of use arises from some condition particular to the property involved:

Finding: Either a small, single-street residential subdivision project could theoretically develop on the 4-acre property, a single home could be built on the property, or one of the institutional uses could build on the property. Either way, the property could be used in a manner that is consistent with permitted uses in the SF-2 District.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:

Finding: Strictly applying the zoning ordinance would not permit the requested use. Landscaping businesses are permitted elsewhere within Westfield-Washington Township, and this site that is surrounded by suburban residential development is not the most appropriate location for this use. The Property could be used in a manner that is consistent with permitted uses in the SF-2 District.

5. The approval does not interfere substantially with the comprehensive plan:

Finding: The proposed land use is not consistent with the recommendations for the Suburban Residential area of the Comprehensive Plan, which calls for residential, institutional, and recreational uses.



DEPARTMENT RECOMMENDATIONS

1. Hold a vote on the request to suspend the BZA Rules of Procedure regarding public notice requirements (See **"Petition History & Public Notice"** discussion above).
2. If the Rules are not suspended by a unanimous vote, then continue the item to the July 14, 2015 BZA meeting.
3. If the Rules are suspended by a unanimous, then hold a public hearing and take action on the case.
4. If the Board approves 1406-VU-06, then the Department recommends the following conditions:
 - a. That 79-V-12 be repealed and deemed no longer valid;
 - b. That the Property develop substantially consistent with the attached concept plan (see **Exhibit 6**);
 - c. That any new site improvement or structure follow the development and design rules in the UDO for Industrial Uses/Districts (i.e. landscaping, parking, architecture, etc.);
 - d. That Buffer C (per the UDO) requirements apply to the north, south, and east property lines, except as modified herein: that the mound not be required, but rather that a 6'-8' tall opaque fence be installed along the full length of each of those property lines. Chain-link fencing with slats shall not be permitted. At the Director's discretion, credit may be given to existing improvements (i.e. fencing) and plantings. Existing structures located within the buffer yards shall be allowed to remain as they exist at the time of approval. Any future building or parking lot expansion shall be required to comply with all setback and yard requirements in place at that time. All required buffer yard improvements shall be installed within 6 months of variance approval, pending weather. A Certificate of Compliance shall be obtained upon a passed inspection of the installed landscaping.
 - e. That External Street Frontage landscaping requirements for a non-residential use (per the UDO) apply along Ditch Road and be installed within 6 months of variance approval, pending weather. A Certificate of Compliance shall be obtained upon a passed inspection of the installed landscaping.
 - f. That the business only be permitted to operate on the Property, including receiving deliveries, between the hours of 7:00 AM to 7:00 PM, Monday-Saturday. The only exception being that the hours of operation limitation not apply during times related to snow-removal;



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- g. That the petitioner shall dedicate up to 35' half right-of-way (pursuant to the Westfield Thoroughfare Plan) along the Property's Ditch Road frontage to the City of Westfield within 3 months of variance approval; and,
- h. That the petitioner shall install the required 8' asphalt pedestrian pathway along Ditch Road within 3 months of variance approval.